**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION NO. 25246 OF 1996**

Date: 07.02.2006

Between:

K. Yadaiah, S/o Veeraiah, aged: 42 years, Occ: ex-Naik, UBL, Post Kondapuram, via. Munugodu, Nalgonda District.

… Petitioner

and

1. The Chief Security Commissioner, Railway Protection Force, South Central Railway, Rail Nilayam, Secunderabad and three others.

… Respondents.

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**ORDER:**

In this writ petition, the order of the Divisional Security Commissioner, Railway Protection Force, Hubli, dated 16.9.1995, in removing the petitioner from service and the enquiry report of the Inspector, workshop, Hubli dated 23.8.1995 is under challenge. Petitioner seeks a further direction that he be reinstated into service with all consequential benefits.

Facts, to the extent necessary for this writ petition, are that the petitioner was working as a Naik in the railway protection force from 17.11.1979 onwards. He was issued a charge sheet wherein it was alleged that while he was camping at Gudag and performing sentry duty, during the intervening night of 10th/11th April,1995, he had pointed his riffle at Sri M.Mahattma, cashier, Sri C.G.Chowdari, assistant sub inspector, Railway protection force and B.R.Deshnoor Constable and had wrongly confined them till the next day morning upto 7.00 a.m. Petitioner was also charged of gross misbehavior and indiscipline, vide charge sheet dated 26.4.1995. The 4th respondent was appointed as the enquiry officer and on receipt of the enquiry report, the 3rd respondent – disciplinary authority, by order dated 16.9.1995, removed the petitioner from service. The petitioner preferred an appeal to the 2nd respondent on 25.9.1995 and since his appeal was not disposed of, he submitted a representation and since no reply was received thereto, he filed the present writ petition.

Sri D.Ramakrishna, learned counsel for the petitioner, contends that the order of the disciplinary authority and the enquiry report of the 4th respondent is invalid for the following grounds:

1. Though Rule 153(16) of the Railway Protection Force Rules, 1987 requires, after all the relevant evidence is brought on record, that the statement of the charged employee be recorded and a clarification obtained thereto, the said rule was not complied with and the petitioner was denied the opportunity of having his statement recorded in the enquiry;

2. The very fact that no criminal case was instituted against the petitioner would show that the charges levelled against him were false;

3. The enquiry officer, in his report, did not record any specific finding that the charges, held proved against the petitioner, amounted to serious misconduct; and

4. The punishment of removal is highly disproportionate.

Before the aforesaid contentions are dealt with, it is necessary to refer to the charges leveled against the petitioner, which are as under:

"Sri K.Yadaiah, Naik – 974/DR/UBL is hereby charged for his gross misbehaviour and indiscipline act in that:-

While he was on cash escorting duty of Pay Unit No.7 with Arms & Ammunition along with cashier Sri M.Mahattma, Sri G.G.Chowdhary and Constable Sri B.R.Beshnur and while camping at Cash Office/GDG during the night of 10/11-4-1995 he pointed out rifle at Sri M.Mahattma, Cahsier/Hubli, Sri G.G.Chodhari, ASIPF/DR/UBL when performing sentry duty and kept them wrongly confined in the cash office/Gadag till morning up to 7.00 hours of 11.4.1995.

Hence the charge"

It is this charge which the enquiry officer, in his report dated 22.8.1995, had held as proved. While seven witnesses were examined on behalf of the prosecution and thirteen documents were marked as exhibits, the petitioner did not chose to adduce any evidence in his defence nor did he mark any document on his behalf as exhibits. Sri M.Mahatma, cashier, Sri G.G.Chowdhary, assistant sub-inspector, Sri B.R.Dashnur, constable, who were all subjected to illegal confinement, deposed in the enquiry. Sri M.Mahatma specifically stated that he was not even allowed to go out for nature call and when he shouted for help, one Sri M.D.Doddamani, Dy.S.S. came and peeped through the window and that the petitioner loaded his rifle and aimed at him, closed the window and switched off the light. Sri M.Mahatma stated that he was also forced to pass urine in a water bottle and that only in the morning at 7.00 a.m. was he able to go out. Sri G.G.Chowdhary deposed that he was incharge of escort duty and he had deputed the petitioner for sentry duty from 22.00 hours to 00.00 hours on 10.4.1995 to which the petitioner had argued and threatened him. He also stated that the petitioner had aimed the loaded rifle at Sri M.Mahatma, cashier, when he attempted to go out for nature call and when they tried to interfere, the petitioner aimed his rifle and threatened them. These witnesses were cross-examined by the petitioner. Sri M.D.Doddamani, Dy.S.S./GDG deposed that when

he was on duty, during the night on 10/11/-4/1995, he came to know through a labourer that there was some shouting sound in the cash office, when he went and found the main door closed, he peeped through the window and found the cashier, assistant sub-inspector and one constable standing on one side, that the cashier told him that he was not being allowed to go out for nature call and when he peeped inside, he saw a R.P.F. employee near the door who told him not to interfere and go out and that he had informed the matter to Sri K.G.V.Ramudu through the control phone. The petitioner chose not to cross-examine this witness. Sri K.G.V.Ramudu deposed that on 11.4.1995 at 02.30 hours, he came to know, through the control phone, that there was some problem in the cash office, when he visited the place he found the door and window of the cash office in closed condition, when he tapped the door and called for the assistant sub-inspector and since there was no reply, he met Sri D.Doddamani, who told him that the petitioner did not allow the cashier to go out even for passing urine. While the petitioner neither produced any witnesses in his defence nor did he mark any documents as exhibits, he filed his defence statement wherein he stated that the charges levelled against him were fabricated by some interested persons.

On an assessment of the evidence, the enquiry officer held that the petitioner had not put forth any animosity between him and the other witnesses and had not established the case of fabrication of the charge against him. The enquiry officer took note of the fact that the window of cash office was in an open condition and that it was closed by the petitioner only when Sri M.D.Doddamani peeped through it. The enquiry officer also noted that while cross-examining Sri B.R.Deshnur, the petitioner, at question No.6, had admitted that he had loaded the round in the chamber of his rifle by mistake. The enquiry officer held that the charges levelled against the petitioner were proved.

The disciplinary authority, in his proceedings dated 16.9.1995, analyzed the evidence of the prosecution witnesses and on taking into account the entire evidence, adduced on behalf of the prosecution, fully agreed with the conclusion of the enquiry officer that the charges were proved. The disciplinary authority held that it was established that in the night of 10$^{th}$/11$^{th}$ April, 1995, the petitioner had acted illegally in pointing out a loaded rifle towards the cashier, the assistant sub-inspector and a constable in the cash office, that by closing down the window he had wrongfully confined them in the room and that the situation was so grave that the

cashier Sri M.Mahatma had to pass urine in a bottle inside the room. The disciplinary authority took note of the statement submitted by the petitioner in his defence. The disciplinary authority held that a loaded rifle in the hand of a member of the armed force required him to act with utmost care and attention and any act contrary thereto was not only a disgrace to the disciplinary rules and regulations, but was very dangerous and could possibly have caused loss of life. The disciplinary authority held that the charges levelled against the petitioner were grave and serious and since the petitioner was guilty thereof, he did not deserve to be continued as a member of the armed force. The petitioner was removed from service with immediate effect and the period of suspension, from 12.4.1995 till the date of the order, was treated as suspension only and not on duty.

The contention of Sri D. Ramakrishna, learned Counsel for the petitioner, that the enquiry officer has not given any specific finding regarding serious misconduct, must be rejected. The enquiry officer, on assessment of the evidence, held that the charges levelled against the petitioner were proved. Even otherwise, the function of an enquiry officer is to record the evidence adduced in the enquiry and to give his findings thereon and it is for the disciplinary authority, on the basis of the enquiry report, to take action for the misconduct held proved in the enquiry. Since the authority competent to impose punishment is the disciplinary authority and since elaborate reasons have been assigned by the disciplinary authority for holding the petitioner guilty of the charges levelled against him, it matters little that the enquiry officer had not elaborately discussed the evidence adduced on behalf of the prosecution in coming to the conclusion that the charges levelled against the petitioner were proved.

The contention, that failure to institute criminal proceedings itself proves that the charges levelled against the petitioner were not genuine, cannot also be accepted. It is well settled that criminal proceedings are distinct from disciplinary proceedings and it is open to the disciplinary authority to simultaneously initiate disciplinary action while an employee is being prosecuted in a criminal case. So long as the evidence on record, in a departmental enquiry, is sufficient to hold the charges as proved it is of no consequence that no criminal case was lodged against the petitioner for the same charge.

The next contention is of failure to comply with the requirement of Rule 153(16) of the Railway Protection Force Rule, 1987. Rule 153(16) prescribes the procedure for imposing major punishment and sub-rule (16) reads thus:

"If the party charged refuses to produce any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produce any evidence, the Inquiry Officer shall proceed to record the evidence. If the Inquiry Officer considers that the evidence of any witness or any document which the party charged wants to produce in his defence is not material to the issues involved in the case, he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. **When all relevant evidence has been brought on record, the proceedings shall be closed for orders after recording the statement, if any, of the party charged and obtaining any clarification, if necessary, from him."** (emphasis supplied).

It is true that sub-rule (16) requires, the statement of the charge sheeted employee to be recorded and to obtain any clarification, if necessary, from him. The requirement of obtaining clarification is only if the enquiry officer considers it necessary. Failure to seek clarifications as such cannot be considered as a violation of the rule.

While it is true that no statement of the petitioner was recorded after all the relevant evidence had been brought on record the fact, however, remains that the statement submitted by the charge sheeted employee, in his defence, was taken note of both by the enquiry officer and the disciplinary authority. Except for stating that his statement was not recorded in the departmental enquiry, the petitioner has not pleaded nor is it contended before this court by Sri D.Ramakrishna, learned counsel for the petitioner, that the petitioner suffered any prejudice thereby or that failure to provide such an opportunity has resulted in manifest injustice to him.

In **State Bank of Patiala v. S.K. Sharma** the Supreme Court, while evolving certain basic principles of natural justice in the context of disciplinary enquiries and orders of punishments imposed by an employer, held thus:

**"**We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a

disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (*a*) the provision violated is of a substantive nature or (*b*) whether it is procedural in character.

(2) A substantive provision has *normally* to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can *also* be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(*a*) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(*b*) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it *or* that the provision

could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in *B. Karunakar*[18]. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/ statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no *adequate* opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (*a*) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (*b*) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

Rule 153(16) is undoubtedly a provision whereby the delinquent is provided a reasonable and adequate opportunity to put forth his defence in the form a statement. In the present case, the petitioner cross-examined the prosecution witnesses but, however, chose not examine any witness in his defence or to place any documentary evidence, except a defence statement which was considered both by the enquiry officer and the disciplinary authority. Nothing has been stated in the affidavit, filed in support of the writ petition, as to how the petitioner was prejudiced as a result of non-compliance with Rule 153(16), in not having his statement recorded in the domestic enquiry. Having failed to avail the opportunity of adducing evidence in his defence, it is not open to the petitioner to contend that failure to

record his statement, as prescribed in Rule 153(16) would be fatal to the enquiry proceedings necessitating the entire disciplinary proceedings being set aside, more so since the statement submitted by him in his defence has been considered both by the enquiry officer and the disciplinary authority. No prejudice has been shown to have been caused as a result of non-compliance with the requirement of recording the statement of the petitioner on completion of the enquiry. I therefore see no reason to interfere with the impugned order for non-compliance of Rule 153(16) of the Rules.

Rule 156 relates to punishment and reads as under:

"**Imposing of punishment of dismissal etc**. – Before coming to any lower punishment, the disciplinary authority with a view to ensuring the maintenance of integrity in the Force shall consider the award of punishment of dismissal or removal from services to any member of the Force in the following cases, namely:-

a. Dismissal:-

i. conviction by a Criminal Court;

ii. serious misconduct or indulging in committing or attempting or abetting an offence against railway property;

iii. discreditable conduct affecting the image and reputation of the Force;

iv. neglect of duty resulting in or likely to result in loss to the railway or danger to the lives of persons using the railways;

v. insolvency or habitual indebtedness; and

vi. obtaining employment of his antecedents which would ordinarily have debarred him from such employment.

b. Removal from service:-

i. Any of the misconduct for which he ;may be dismissed under clause (a) above;

ii. Repeated minor misconducts;

iii. Absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause. "

Punishment of removal and dismissal, under Rule 156, can only be imposed for serious misconduct or for negligence of duty or danger to the lives of persons. The charges held proved against the petitioner are that he confined three railway employees, including a cashier and an assistant sub-inspector, in a room

threatening them with a loaded rifle for the entire night intervening 10th/11th April, 1995. These violent acts of the petitioner could have resulted in loss of life and would undoubtedly amount to a serious misconduct. The contention that the punishment imposed on the petitioner is highly disproportionate cannot therefore be accepted. In any event this Court, in proceedings under Article 226 of the Constitution of India, would not sit in appeal over the punishment imposed by the competent authority against an employee and it is only in cases where the punishment imposed is one which could not have been imposed at all or is one which shocks the conscience of this court, would any interference be called for. The punishment imposed on the petitioner is in accordance with Rule 156 of the Railway Protection Rules, 1987, and a person who has indulged in such acts of serious misconduct cannot be permitted to continue as a member of the Railway Protection Force.

The writ petition, as filed, is without merit and is accordingly dismissed. However, in the circumstances, without costs.

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